

APPEAL NO. 010627

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 18, 2000, and January 19, 2001. With respect to the issues before her, the hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable injury on _____; that the injury was not caused by the claimant's willful intention and attempt to injure himself; and that the claimant did not sustain disability as a result of the compensable injury. The appellant/cross-respondent (carrier) urges on appeal that the hearing officer's determinations that the claimant sustained a compensable injury on _____, and that the injury was not caused by his willful intention to injure himself are against the great weight of the evidence. The claimant urges on appeal that the determination that he did not sustain disability as a result of the compensable injury is against the great weight of the evidence.

DECISION

Affirmed.

A "compensable injury" means "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). The claimant had the burden to prove that he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). In the present case, the hearing officer determined that the claimant sustained a compensable injury to his back on _____, while lifting a piece of metal. The hearing officer also determined that the injury was not caused by the claimant's willful intention and attempt to injure himself.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Conflicting evidence was presented at the hearing regarding whether the claimant sustained an injury on the date in question and whether the claimant sustained a prior injury while working for a former employer. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

Disability is likewise a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. "Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The claimant bears the burden of establishing that a compensable injury was a producing

cause of his disability. The claimant testified that he was able to return to work with restrictions after _____. The evidence reflects that the claimant's employment was classified as seasonal and was terminated on May 5, 2000. The medical records indicate that upon the claimant's initial visit to Dr. D on May 22, 2000, Dr. D retrospectively restricted the claimant from all work with a beginning date of April 28, 2000. Under the facts of this case, we do not perceive error in the hearing officer's resolution of the disability issue. There is sufficient evidence in the record to support the hearing officer's determination that the claimant did not sustain disability as a result of the compensable injury.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge